Reserved.

COURT NO.3

Criminal Appeal No.1045 of 2001
(Old no.1787 of 1982)

Surjeet Singh ..Appellant

Vs.

State ..Respondent

Hon'ble Irshad Hussain, J:

This is an appeal against the judgment and order dated 28.07.1982 passed by II Additional Sessions Judge, Nainital in session trial no.34 of 1981, convicting and sentencing the appellant to rigorous imprisonment for five years and to pay a fine of Rs.2,000.00 under s3eciton 307 I.P.C.

Briefly, the facts are that on 02.10.1997 at about 5 P.M. appellant Surjeet Singh armed with a gun, Makhan Singh armed with a pistol and Smt. Kartar Kaur carring a Gandasi appeared in the agricultural plot of complainant Hakim Singh. Surjeet Singh fired a gun shot aiming at the complainant who fortunately escaped unhurt. On hearing alarm witnesses Pritam Singh, Mangal Singh, Makhan Singh and Gurnam Singh reached there. At that point of time Smt. Kartar Kaur gave exhortation to her above companions not to let complainant Hakim Singh go and to kill him. Surjeet Singh then fired a second shot form gun which hit witness Pritam Singh. Smt. Kartar Kaur and one of her companion Makhan Singh then ran away from the place of the occurrence. Surjeet Singh however loaded his gun third time but he shot misfired. Witness Gurnam Singrh was successful in giving a Lathi blow tot the hand of the said accused and

In the process the gun wads snatched from Surjeet Singh. Thereafter Surjeet Singh ran away from there. From the scene of the occurrence two empty cartridges were also recovered. The complainant Hakim Singh went to police out-post Nanakmatta of P.S. Sittarganj and lodged oral report at 9:30 P.M. the same day. On registration of case investigation was taken up by S.I. Virendra Kumar who recorded the statements of the witnesses and prepared site-plan, Ext.ka.6. Charge-sheet against the three accused Ext.ka.14 was submitted on 29.11.1979. According to the prosecution one Man Singh son of the brother-in-law of the complainant Hakim Singh had been murdered and this had been the cause of enmity between the complainant and accused.

Injured Pritam Singh was medically examined by Dr. K.P.Dube (P.W.3), the medical officer of district hospital Pilibhit at 11:15 A.M. on 04.10.1979 and following injures were detected on his person:

(1) Abrasion 0.2 cm X 0.2 cm. over the back of right thigh lower part,
(2) Abrasion 0.2 cm. X 0.2 cm over the right leg upper part medial size
(3) Firearm wound of entry 0.2 cm. X 0.2 cm, depth under observation, over the right poplital fossa, blackening and tattooing absent.
(4) Firearm wound of entry 0.2 cm. X 0.2 cm; depth under observation over the back of right ankle; blackening and tattooing absent.

According to the medical officer injuries nos.1 and 2 were caused by friction against hard object and whereas injuries nos.3 and 4 were caused by firearm. He had prepared injury report, Ext.ka.3. He also proved report of the radiologist, Ext.ka.4 and testified that in the X-ray of right knee two small rounded metallic density foreign body shadows and in the X-ray of right ankle one small rounded metallic density foreign body shadow were found present.

Medical officer testified that injuries were about 1 ½ days old and there could be difference of 6-8 hours on either side in the duration of the injuries.

Besides the medical officer prosecution also examined complainant Hakim Singh (P.W.1), injured Pritam Singh (P.W.2) and another eye witness Makhan Singh (P.W.4) in the trial. Accused did not admit the accusation of the prosecution and claimed that he was falsely implicated due to enmity. Learned Sessions Judge on the basis of his appreciation found the evidence of the prosecution reliable so far as the implication of the appellant Surjeet Singh in the commission of the crime was concerned and accordingly held him guilty and convicted and sentenced as mentioned above. The two other accused nominated in the F.I.R. were acquitted on the ground that no overt act was attributed to them and their implication was on account of enmity.

Heard Sri Jagtar Singh, learned counsel for the appellant and Sri R.S.Sammal, learned A.G.A.

The main thrust of the argument of the learned counsel for the appellant was that there being conflict in the medical evidence and the ocular testimony of the witnesses the learned Sessions Judge should not have placed implicit reliance on the evidence of the complainant, injured witness as well as another eye witness examined in the case and that in the totality of circumstances of the case appellant should have also been given benefit of doubt and acquitted of the charge leveled against him. Attention was drawn to the statement of the medical officer Dr. K.P.Dube (P.W.3) who claimed to have examined the injured Pritam Singh at 11:15 P.M. on 4.10.1979 and testified that the injuries in this case were not probably sustained at about 5:30 P.M. on 2.10.1979 and it was argued that the evidence to this effect raise grave suspicion in the claim of the eye witnesses and the injured that the occurrence took place at about 5:00 or 5:30 P.M. and the injuries by Pritam Singh (P.W.2) were sustained at that time at the hands of the appellant Surjeet Singh. It need to be mentioned here that all the three witnesses of the fact have categorically stated that the occurrence took place as stated in the F.I.R. and at the time mentioned therein, i.e. at about 5 P.M. on 2.10.1979. Here it need to be mentioned that injured Pritam Singh specifically urged that he was medically examined on second day form the day of the occurrence.

Occurrence took place on 2.10.1979 and the first day will fall on 3.10.1979 and whereas the second day as stated to by the said injured witness will be 4.10.1979. He also gave out that he could not be medically examined at PHC Khatima as medical officer was not available there and as suggested he went to Pilibhit hospital in the morning of the second day. In the face of this evidence as submitted by the learned A.G.A. the medical examination of the injured in all probability could have been done in the forenoon of 4th October 1979. The time of medical examination mentioned in the medical examination report, Ext.ka.3 is 11:15 A.M. which cursorily is also readable as 11:15 P.M. and this was the reason that the medical officer Dr. K.P.Dube (P.W.3) gave out that the medical examination was conducted at 11:15 P.M. on 4.10.1979. It is of significance that the injuries were found to be 1 ½ days old and medical officer has testified that there could be a difference of 6-8 hours on either side in the duration of injuries. The duration so given in the medical examination report (Ext.ka.3) as well as corroborated in the evidence by the medical officer fully tally with the prosecution version and claim of the witnesses that the injures were sustained on 2.10.1979 at about 5:00 – 5:30 PM. It may also be pointed out here that out of inadvertence the medical officer gave out that the injuries of the injured were not probably caused at about 5:30 P.M. on 2.10.1979. Considering the definite evidence of the witnesses of fact the inadvertent mistake which crept in in the statement of the medical officer about the actual time of medical examination of the injured and also probability of not sustaining the injuries at the time the occurrence as alleged by the prosecution, cannot safely be taken to raise any grave doubt in the claim of the prosecution and credibility of the evidence of the witnesses of the fact. In short the evidence on record leas to one and the only inference that the occurrence took place at about 5:00 – 5:30 P.M. on 2.10.1979 and the injuries were sustained by injured Pritam Singh at that time at the hands of the appellant Surjeet Singh who wielded a gun and fired the shot hitting the said victim. In other words the oral evidence or the prosecution is

also corroborated by the medical evidence and there being no conflict between ocular testimony and the medical evidence the submissions made on behalf of the appellant are without any substance and fail to make any dent in the credibility of the prosecution case.

The learned counsel to support his argument that the appellant has been falsely roped in again drew attention to the statement of medical officer who gave out that all the injuries of the injured were on non-vital parts of the body and these could also be self-suffered and argued that this aspect of the matter was not taken note of by the learned Sessions Judge. I see no force in this argument also because the possibility of the false implication of the appellant was also being ruled out by the fact that weapon of assault, gun was snatched on the spot from the appellant. The gun was deposited alongwith empty cartridges at the police out-post vide memo., Ext.ka.2 and it was found that the licensed gun belonged to Joginder Singh who belonged to the party of the appellant. Defence has not taken the case that the gun was stolen or removed surreptitiously form the house of Joginder Singh and was falsely shown to have been wielded by the appellant at the time of the occurrence and therefore the presence of the appellant and his participation in the incident cannot be doubted.

As regards motive of the crime it is not disputed that the complainant and the injured on the one side and the appellant and others on the other side are attached to rival factions although related to each other. It is not disputed that Man Singh son of the brother-in-law of the complainant Hakim Singh was murdered and Arjun Singh was named as an accused in that case. The complaint of the incident was a witness against the said Arjun Singh. Appellant belonged to the party of Arjun Singh. Arjun Singh was later on murdered and brother-in-law of the complainant was named as an accused in the said case. It is thus obvious that there are party factions and the possibility cannot be ruled out that the appellant on account of enmity went out to make an attempt to commit the murder of the complainant of the case, but in the incident injured Pritam

Singh was hurt by the firearm shot. In other words the cause of crime is also established in this case.

Appellant had wielded a firearm, a deadly weapon in the occurrence and he was even out to fire third time but could not succeed and therefore his intention was to commit the murder of the complainant or in any case the victim of the case and therefore the appellant was rightly held guilty of the charge under section 307 I.P.C.

So far as the sentence part of the case is concerned it was submitted that the sentence awarded is severe. It was submitted that the victim of the case had sustained only simple injuries on non-vital parts of the body and the facts and circumstances of the case warrant that a lenient view need to be taken in awarding the sentence. Considering the totality of circumstances of the case and the clear intention which the appellant carried at the time of wielding the firearm and firing shot, the sentence of five years' rigorous imprisonment does not appear excessive and severe.

For the above reasons and discussion the appeal is devoid of merit and the same is liable to be dismissed. The judgment and order dated 28.07.1982 passed by the II Addl. Sessions Judge, Nainital in S.T.No.34 of 1981 is affirmed.

Appeal is dismissed accordingly. Appellant is on bail which is hereby cancelled. He shall be taken into custody forthwith to undergo the sentence imposed upon him. The C.J.M. Udham Singh Nagar shall take steps to make compliance thereof.

01.05.2003/B.

(Irshad Hussain, J.)